IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

OP.No. 24066 of 2001(M)

PETITIONERS:
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1. **K.GOPINATHAN NAIR,**
   KERALA WATER AUTHORITY, EAST SUB-DIVISION,
   SECTION NO.IV, P.T.P.NAGAR.

2. **T.SURESH KUMAR,**
   KERALA WATER AUTHORITY, EAST SUB-DIVISION,
   SECTION NO.IV, P.T.P.NAGAR.

3. **MURUKAN K.,**
   KERALA WATER AUTHORITY, EAST SUB-DIVISION,
   SECTION NO.IV, P.T.P.NAGAR.

4. **SIBY K.D.,**
   KERALA WATER AUTHORITY, EAST SUB-DIVISION,
   SECTION NO.IV, P.T.P.NAGAR.

5. **K.GOPALAKRISHNAN NAIR,**
   KERALA WATER AUTHORITY, EAST SUB-DIVISION,
   SECTION NO.IV, P.T.P.NAGAR.

6. **RAJESH BABU,**
   KERALA WATER AUTHORITY, EAST SUB-DIVISION,
   SECTION NO.V, KARAMANA.

7. **S.VINOD,**
   KERALA WATER AUTHORITY, EAST SUB-DIVISION,
   SECTION NO.IV, P.T.P.NAGAR.

8. **S.MOHANAN,**
   KERALA WATER AUTHORITY, EAST SUB-DIVISION,
   SECTION NO.IV, P.T.P.NAGAR.

9. **J.XAVIOR,**
   KERALA WATER AUTHORITY, EAST SUB-DIVISION,
   SECTION NO.IV, P.T.P.NAGAR.

10. K.VIJAYAN,
KERALA WATER AUTHORITY, EAST SUB-DIVISION,
SECTION NO.IV, P.T.P.NAGAR.

11. SHAJI S.,
KERALA WATER AUTHORITY, EAST SUB-DIVISION,
SECTION NO.IV, P.T.P.NAGAR.

12. VENUGOPALAN NAIR K.,
KERALA WATER AUTHORITY, EAST SUB-DIVISION,
SECTION NO.IV, P.T.P.NAGAR.

13. ANIL KUMAR R.,
KERALA WATER AUTHORITY, EAST SUB-DIVISION,
SECTION NO.IV, P.T.P.NAGAR.

14. D.ANI.,
KERALA WATER AUTHORITY, EAST SUB-DIVISION,
SECTION NO.V, KARAMANA.

15. ANIL KUMAR C.R.,
KERALA WATER AUTHORITY, EAST SUB-DIVISION,
SECTION NO.IV, P.T.P.NAGAR.

16. KRISHNA KUMAR P.,
KERALA WATER AUTHORITY, EAST SUB-DIVISION,
SECTION NO.IV, P.T.P.NAGAR.

17. SURESH DAS S.V.
KERALA WATER AUTHORITY, EAST SUB-DIVISION,
SECTION NO.IV, P.T.P.NAGAR.

18. NOBLE JOSE,
KERALA WATER AUTHORITY, EAST SUB-DIVISION,
SECTION NO.V, KARAMANA.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE KERALA WATER AUTHORITY, REPRESENTED BY ITS
MANAGING DIRECTOR, OFFICE OF THE KERALA
WATER AUTHORITY, THIRUVANANTHAPURAM.

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ADDL.R3. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF LABOUR, NEW DELHI.

ADDL.R4. THE SUPERINTENDENT, VOCATIONAL REHABILITATION CENTRE FOR HANDICAPPED, NALANCHIRA, THIRUVANANTHAPURAM.

(ADDL.R3 & R4 IMPLEADED AS PER ORDER IN C.M.P.NO.49826/2001 IN OP NO.24066 OF 2001 DT 20.2.2007)

BY ADV. SRI.M.V.MATHAI MUTHIRENTHY, SC, KWA
SRI.K.M.JAMALUDHEEN, CGC
SRI.THOMAS MATHEW NELLIMOOTTIL,SC,KWA
SRI.BABU VARGHESE, SC, KWA
GOVERNMENT PLEADER SRI.SANDESH RAJA
SRI.C.UNNIKRISHNAN, SC, KWA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER (LETTER) NO.VRCI/11/1/95-REF/835 DATED 23.5.95.

EXT.P2: TRUE COPY OF THE ORDER G.O(P) NO.32/98/P&ARD. DATED 28.9.98.

EXT.P3: TRUE COPY OF THE ORDER G.O(P)NO.10/99/P&ARD. DATED 17.5.1999.

EXT.P4: TRUE COPY OF THE ORDER G.O(P)NO.18/99/P&ARD. DATED 13.10.99.

EXT.P5: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIOENRS BEFORE THE 1ST RESPONDENT DATED 21.6.2000.

EXT.P6: TRUE COPY OF THE ORDER NO.17850/B3/2000.IRRI.WA. DATED 5.3.2001.

EXT.P7: TRUE COPY OF THE STATEMENT OF OBJECTIVE OF THE CENTRE PUBLISHED BY THE VOCATIONAL REHABILITATION CENTRE FOR HANDICAPPED.

EXHIBITS OF R4

EXT.R4(a): TRUE PHOTOCOPY OF THE LIST OF PERSONS SUBMITTED TO KERALA WATER AUTHORITY.

EXT.R4(b): TRUE COPY OF THE REGISTRATIONDETAILS OF THE PETITIONERS UNDER THE 4TH RESPONDENT.

ORDER IN C.M.P.NO.39466 OF 2001 IN OP NO.24066 OF 2001

DISMISSED

20/02/2007 **SD/-**
ANTONY DOMINIC, JUDGE

//TRUE COPY//

P.A. TO JUDGE

ANTONY DOMINIC, J.

O.P NO. 24066 OF 2001

Dated this the 20th day of February, 2007

J U D G M E N T

The benefit of Exhibits P2 to P4 and the consequential regularisation under the Kerala Water Authority is the relief sought by the petitioners in this Original Petition. Petitioners, who are physically handicapped, are stated to have been employed by the Kerala Water Authority, on being sponsored by the Vocational Rehabilitation Centre, which has since been impleaded in this case as the additional 4th respondent. It is stated that the petitioners were working under the Kerala Water Authority from various dates from 1994 onwards and it is stated that they still continue as such. It would appear that their claim for regularisation was considered by the 1st respondent and has been negatived by Ext.P6. According to the 1st respondent, those physically handicapped persons who were sponsored by the Employment Exchange and appointed under Rule 9

(A) (1) of the K.S & S.S.R alone are entitled to the benefit of regularisation ordered by the Government in Exhibits P2 to P4. It is challenging this order and seeking the other reliefs that this original petition is filed.

2. Counsel for the petitioners submit that strictly speaking though the petitioners were not sponsored by the Employment Exchange as required under Exhibits P2 to P4, still they were sponsored by the Vocational Rehabilitation Centre, an organisation established by the Central Government under the Ministry of Labour, for taking care of the welfare of persons like the petitioners who are physically handicapped. According to him, being so sponsored, they are working for the last more than ten years and as such, they should also be extended the benefit of regularisation ordered by the Government in Exhibits P2 to P4. It is stated that although orders of appointment have not been issued, they still continue in the service of Kerala Water Authority

and therefore it will be harsh to deny them the benefit of regularisation.

3. The learned counsel for the Kerala Water Authority would contend that there is no employer-employee relationship between the petitioners and the Kerala Water Authority in as much as they were sponsored by the 4th respondent and are working on contract basis. According to him, in the absence of employer-employee relationship, and as they were not sponsored by the Employment Exchange, benefit of Exhibits P2 to P4 cannot be claimed.

4. Counsel for the 4th respondent Vocational Rehabilitation Centre would submit that the petitioners were sponsored by the Vocational Rehabilitation Centre and they have recommended to the Kerala Water Authority the case of these petitioners for regularisation.

5. On going through Exhibits P2 to P4, it is seen that the petitioners do not come within the scope of these

Government orders. By Exhibit P2, regularisation of physically handicapped provisional (temporary) employees was ordered by the Government, provided these employees were engaged in public service through Employment Exchanges and under Rule 9(A)(1) of K.S & S.S.R 1958. By Exhibit P3, the validity period of Exhibit P2, which was upto 31/12/1997, was extended to 14/8/98. It was still later that, by Exhibit P4, the benefit of Exhibits P2 and P3 were extended to provisional employees engaged in the Public Sector Undertakings as well. Therefore, unless the provisional employee was sponsored by the Employment Exchange and appointed under Rule 9(A)(1) of K.S. & S.S.R, such provisional employee, even if he satisfies other remaining conditions of Exhibits P2 and P3, will not be entitled to the benefit of these Government orders. In this particular case, it is the admitted position that the petitioners were not sponsored by the Employment

Exchange. It is true that they are sponsored by the Vocational Rehabilitation Centre, which according to the petitioner is an organisation similar to the Employment Exchange. Similarity between the organisations is immaterial, so long as such similar organisations are not included within Exhibits P2 to P4. Therefore it is only those provisional employees sponsored by the Employment Exchange and satisfying the other conditions alone are entitled to the benefit of these Government orders. Admittedly, the petitioners do not satisfy such conditions and therefore they cannot claim the benefits.

6. It is contended that irrespective of the above and in view of the long service rendered by the petitioners they are entitled to claim regularisation under the Kerala Water Authority. While upholding Exhibit P6 order of the Government negativing the claim of the petitioners, I leave open the claim of the petitioners for regularisation under the

Kerala Water Authority, independent of Exhibits P2 to P4 and clarify that they are at liberty to pursue their claims with the respondents.

The original petition is disposed of with the above observations. No costs.

ANTONY DOMINIC, JUDGE

Rp